

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

GARY HIGLEY, an individual,
Plaintiff,

v.

TULSA DENTAL PRODUCTS, LLC, a
Delaware limited liability corporation,
Defendant.

Case No. 2:15-CV-0260-TOR

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged: all documents reflecting financial

1 information related to Defendant or employees' of Defendant and all documents
2 reflecting Defendant's sales strategy, sales figures, or market share.

3 3. SCOPE

4 The protections conferred by this agreement cover not only confidential
5 material (as defined above), but also (1) any information copied or extracted from
6 confidential material; (2) all copies, excerpts, summaries, or compilations of
7 confidential material; and (3) any testimony, conversations, or presentations by parties
8 or their counsel that might reveal confidential material. However, the protections
9 conferred by this agreement do not cover information that is in the public domain or
becomes part of the public domain through trial or otherwise.

10 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

11 4.1. Basic Principles. A receiving party may use confidential material that is
12 disclosed or produced by another party or by a non-party in connection with this case
13 only for prosecuting, defending, or attempting to settle this litigation. Confidential
14 material may be disclosed only to the categories of persons and under the conditions
15 described in this agreement. Confidential material must be stored and maintained by a
16 receiving party at a location and in a secure manner that ensures that access is limited
to the persons authorized under this agreement.

17 4.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
18 otherwise ordered by the court or permitted in writing by the designating party, a
19 receiving party may disclose any confidential material only to:

- 20 (a) the receiving party's counsel of record in this action, as well as
21 employees of counsel to whom it is reasonably necessary to disclose the information
for this litigation;
- 22 (b) the officers, directors, and employees (including in house counsel)
23 of the receiving party to whom disclosure is reasonably necessary for this litigation,

1 unless the parties agree that a particular document or material produced is for
2 Attorney's Eyes Only and is so designated;

3 (c) experts and consultants to whom disclosure is reasonably
4 necessary for this litigation and who have signed the "Acknowledgment and
5 Agreement to Be Bound" (Exhibit A);

6 (d) the court, court personnel, and court reporters and their staff;

7 (e) copy or imaging services retained by counsel to assist in the
8 duplication of confidential material, provided that counsel for the party retaining the
9 copy or imaging service instructs the service not to disclose any confidential material
10 to third parties and to immediately return all originals and copies of any confidential
11 material;

12 (f) during their depositions, witnesses in the action to whom
13 disclosure is reasonably necessary and who have signed the "Acknowledgment and
14 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating
15 party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
16 depositions that reveal confidential material must be separately bound by the court
17 reporter and may not be disclosed to anyone except as permitted under this agreement;

18 (g) the author or recipient of a document containing the information or
19 a custodian or other person who otherwise possessed or knew the information.

20 4.3. Filing Confidential Material. Before filing confidential material or
21 discussing or referencing such material in court filings, the filing party shall confer
22 with the designating party to determine whether the designating party will remove the
23 confidential designation, whether the document can be redacted, or whether a motion
to seal or stipulation and proposed order is warranted.

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1. Exercise of Restraint and Care in Designating Material for Protection.

Each party or non-party that designates information or items for protection under this

1 agreement must take care to limit any such designation to specific material that
2 qualifies under the appropriate standards. The designating party must designate for
3 protection only those parts of material, documents, items, or oral or written
4 communications for which protection is warranted.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations
6 that are shown to be clearly unjustified or that have been made for an improper
7 purpose (*e.g.* to unnecessarily encumber or delay the case development process or to
8 impose unnecessary expenses and burdens on other parties) expose the designating
9 party to sanctions.

10 If it comes to a designating party's attention that information or items that it
11 designated for protection do not qualify for protection, the designating party must
12 promptly notify all other parties that it is withdrawing the mistaken designation.

13 5.2. Manner and Timing of Designations. Except as otherwise provided in
14 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise
15 stipulated or ordered, disclosure or discovery material that qualifies for protection
16 under this agreement must be clearly so designated before or when that material is
17 disclosed or produced.

18 (a) Information in documentary form: (*e.g.*, paper or electronic
19 documents and deposition exhibits, but excluding transcripts of depositions or other
20 pretrial or trial proceedings), the designating party must affix the word
21 "CONFIDENTIAL" to each page that contains confidential material. If only a portion
22 or portions of the material on a page qualifies for protection, the producing party also
23 must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in
the margins).

(b) Testimony given in deposition or in other pretrial or trial
proceedings: the parties must identify on the record, during the deposition, hearing, or
other proceeding, all protected testimony, without prejudice to their right to so

1 designate other testimony after reviewing the transcript. Any party or non-party may,
 2 within fifteen days after receiving a deposition transcript, designate portions of the
 3 transcript, or exhibits thereto, as confidential.

4 (c) Other tangible items: the producing party must affix in a
 5 prominent place on the exterior of the container or containers in which the information
 6 or item is stored the word "CONFIDENTIAL." If only a portion or portions of the
 7 information or item warrant protection, the producing party, to the extent practicable,
 shall identify the protected portion(s).

8 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
 9 failure to designate qualified information or items does not, standing alone, waive the
 10 designating party's right to secure protection under this agreement for such material.
 11 Upon timely correction of a designation, the receiving party must make reasonable
 12 efforts to ensure that the material is treated in accordance with the provisions of this
 agreement.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1. Timing of Challenges. Any party or non-party may challenge a
 15 designation of confidentiality at any time. Unless a prompt challenge to a designating
 16 party's confidentiality designation is necessary to avoid foreseeable, substantial
 17 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
 18 litigation, a party does not waive its right to challenge a confidentiality designation by
 electing not to mount a challenge promptly after the original designation is disclosed.

19 6.2. Meet and Confer. The parties must make every attempt to resolve any
 20 dispute regarding confidential designations without court involvement. Any motion
 21 regarding confidential designations or for a protective order must include a
 22 certification, in the motion or in a declaration or affidavit, that the movant has
 23 engaged in a good faith meet and confer conference with other affected parties in an
 effort to resolve the dispute without court action. The certification must list the date,

1 manner, and participants to the conference. A good faith effort to confer requires a
2 face-to-face meeting or a telephone conference.

3 6.3. Judicial Intervention. If the parties cannot resolve a challenge without
4 court intervention, the designating party may file and serve a motion to retain
5 confidentiality. The burden of persuasion in any such motion shall be on the
6 designating party. Frivolous challenges, and those made for an improper purpose
7 (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
8 expose the challenging party to sanctions. All parties shall continue to maintain the
material in question as confidential until the court rules on the challenge.

9 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
10 OTHER LITIGATION

11 If a party is served with a subpoena or a court order issued in other litigation
12 that compels disclosure of any information or items designated in this action as
"CONFIDENTIAL," that party must:

13 (a) promptly notify the designating party in writing and include a copy
14 of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or
16 order to issue in the other litigation that some or all of the material covered by the
17 subpoena or order is subject to this agreement. Such notification shall include a copy
of this agreement; and

18 (c) cooperate with respect to all reasonable procedures sought to be
19 pursued by the designating party whose confidential material may be affected.

20 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
22 confidential material to any person or in any circumstance not authorized under this
23 agreement, the receiving party must immediately (a) notify in writing the designating
party of the unauthorized disclosures, (b) use its best efforts to retrieve all

1 unauthorized copies of the protected material, (c) inform the person or persons to
 2 whom unauthorized disclosures were made of all the terms of this agreement, and (d)
 3 request that such person or persons execute the "Acknowledgement and Agreement to
 4 Be Bound" that is attached hereto as Exhibit A.

5 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 6 PROTECTED MATERIAL

7 When a producing party gives notice to receiving parties that certain
 8 inadvertently produced material is subject to a claim of privilege or other protection,
 9 the obligations of the receiving parties are those set forth in Federal Rule of Civil
 10 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
 11 may be established in an e-discovery order or agreement that provides for production
 12 without prior privilege review. Parties shall confer on an appropriate non-waiver
 13 order under Fed. R. Evid. 502.

14 10. NON TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this action, including all appeals, each
 16 receiving party must return all confidential material to the producing party, including
 17 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
 18 appropriate methods of destruction.

19 Notwithstanding this provision, counsel are entitled to retain one archival copy
 20 of all documents filed with the court, trial, deposition, and hearing transcripts,
 21 correspondence, deposition and trial exhibits, expert reports, attorney work product,
 22 and consultant and expert work product, even if such materials contain confidential
 23 material.

The confidentiality obligations imposed by this agreement shall remain in effect
 until a designating party agrees otherwise in writing or a court orders otherwise.

11. EFFECT OF STIPULATION

Once all parties have agreed to this Stipulation, it shall be treated by the parties

1 as an order of the Court until it is formally approved by the Court.

2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

3 Dated this 26th day of October, 2016.

4
5 For Plaintiff:

For Defendant:

6 s/ Megan C. Clark

7 Ronald A. Van Wert, WSBA #32050
8 Megan C. Clark, WSBA #46505
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s/ Jennifer S. Pirozzi

15 Joanna M. Silverstein, WSBA #38577
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21 Phone: 206.623.3300
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23

12 PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.

13 DATED: November 30, 2016



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
Chief United States District Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____[print or type full name], of
 _____[print or type
 full address], declare under penalty of perjury that I have read in its entirety and
 understand the Stipulated Protective Order that was issued by the United States
 District Court for the Eastern District of Washington on _____[date]
 in the case of *Higley v. Tulsa Dental Products, LLC*, No 2:15-cv-00260-TOR. I agree
 to comply with and to be bound by all terms of this Stipulated Protective Order and I
 understand and acknowledge that failure to so comply could expose me to sanctions
 and punishment for contempt. I solemnly promise that I will not disclose in any
 manner any information or item that is subject to this Stipulated Protective Order to
 any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Eastern District of Washington for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____